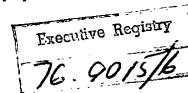


David A. Eckberg
P.O. Box 6443
San Francisco, California
94101



OGC

1 United States District Court
2 Eastern District of California

rec'd 7/19/76

3
4 Eckberg

5 v.

Civil Action No. S-76-53

6 United States, Ford, Rockefeller,

Notice of Appeal

7 Kissinger, Runsfeld, Colby, Central

8 Intelligence Agency, Hoag Memorial

9 Hospital, Mihordin, Patterson

10
11 Notice is hereby given that David A. Eckberg, plaintiff above
12 named, hereby appeals to the United States Court of Appeals for
13 the Ninth Circuit from the order dismissing this action and entering
14 judgment in favor of the defendants on April 12, 1976.

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21 *David A. Eckberg*
22 David A. Eckberg
23 P. O. Box 6443
24 San Francisco, California
25 94101

EXECUTIVE REGISTRY FILE *OGC*

OGC Has Reviewed

David A. Eckberg
P.O. Box 6443
San Francisco, California
94101

United States District Court
Eastern District of California

1 Eckberg

2 v.

3 United States, et.al.

Civil Action No. S-76-53 TJM

Motion to Proceed on Appeal

In Forma Pauperis

4
5
6 Plaintiff David A. Eckberg hereby moves the court for leave to
7 proceed on appeal in the above entitled case, in forma pauperis.
8 Whereas the plaintiff is a pauper within the meaning of 28 USC 1915 (a)
9 to which he has attested in the attached affidavit; and whereas he
10 takes issue with the decision of this court dismissing the plaintiff's
11 action on April 12, 1976; and whereas he believes he is entitled to
12 redress; therefor plaintiff prays for an order of this court relieving
13 him from payment of fees and costs or security therefor in his appeal.
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United States District Court
Eastern District of California

Eckberg

v.

United States, et. al.

Civil Action No. S-76-53 TJM

In Forma Pauperis Affidavit

I David A. Eckberg, being duly sworn, depose and say that I am the plaintiff in this case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding and security therefor; that I believe I am entitled to redress and appeal from the order dismissing this case on April 12, 1976; and that the issues which I desire to present on appeal are the following:

1. Did the District Court error in ruling that the allegations contained in the plaintiff's affidavit in support of disqualification were legally insufficient?
2. Does the plaintiff's complaint and accompanying papers justify a finding that the action is frivolous?
3. Does the plaintiff's complaint and accompanying papers justify a finding that the action is malicious?

I further swear to the following:

- a. I am unemployed and receive benefits from unemployment insurance in the sum of fifty-six dollars (\$56) per week.
- b. I have a checking account with the Security Pacific National Bank, One Grant Avenue Office, San Francisco, having a balance of sixty-eight dollars (\$68) and cash on hand of twenty dollars (\$20).
- c. I am without significant assets such as a car or furniture.

1 I do hereby swear to these facts.
2
3

4 *David A. Eckberg*
5 David A. Eckberg
6

7
8 Subscribed and sworn before me ^{May 15}~~April~~, 1976
9

10 *Mattie S. Cole*
11 Notary Public



David A. Eckberg
P.O. Box 6443
San Francisco, California
94101

United States District Court
Eastern District of California

Eckberg

v.

United States, et al.

Civil Action No. S-76-53 TJM

Points and Authorities in

Support of In Forma Pauperis

It is within the discretion of the district court to grant leave to a poor person to proceed in forma pauperis where it appears the proceeding which he proposes to conduct is not frivolous and he is in fact an indigent. Bryant v. Harrelson 187 F.Supp 738, Corp. of Baltimore v. U.S. 347 F2d 117 (1965). While the plaintiff is not totally penniless, he is a pauper within the meaning of the term. Jefferson v. U.S. (1960) 81 S.Ct. 227.

As to the frivolity of the plaintiff's complaint, the only requirement of this section for the allowance of an indigent's appeal is the applicants good faith. Ellis v. U.S. 78 S.Ct. 974. "Good faith" within the meaning of this section must be judged by an objective and not subjective standard, and a litigants good faith is demonstrated when he seeks appellate review of any issue that is not frivolous. Coppedge v. U.S. (1962) 82 S.Ct. 917. The plaintiff has in fact filed notice of appeal and therefor his actions must be assumed to have been taken in good faith.

A frivolous action is one which is unimportant; on which no serious question of law or fact can arise. Messing v. Messing, 190 Misc. 979. In this case the plaintiff has set forth allegations involving catastrophic damage and infringements, the seriousness of which are apparent on their face. The charges as described in the plaintiff's complaint are not unimportant, do in fact involve serious questions of fact and law, and are not manifestly insufficient.

1 Some allowances must be made for the fact that the plaintiff is
2 by necessity acting in proper and as a novice layman. However, the
3 fact that a pleading is bad, and so adjudged on hearing, does not
4 show that it is frivolous. Farmers and Millers' Bank v. Sawyer,
5 7 Wis. 379.

6 Furthermore, the plaintiff's action cannot be considered malicious
7 or done without justification. R. A.N. W. Hat Shop v. Sculley, 118 A. 55.
8 If ever a wrong cried out for adjudication, it is contained in the
9 plaintiff's complaint and accompanying papers.

10 The test of the right to prosecute an action in forma pauperis
11 is whether the applicant can make a rational argument on the law or
12 facts in support of his claim for relief. Tidmore v. Taylor 323 F2d 88
13 (1963). The plaintiff has in fact applied the weight of reason to
14 his complaint, papers, and documents. The good-faith test of an
15 applicant seeking leave to appeal in forma pauperis must not be
16 converted into a preliminary showing of any particular degree of merit.
17 Ellis v. United States (1958) 78 S.Ct. 974.

18
19
20 Dated: May 28, 1976

21 *David A. Eckberg*
22 Submitted by David A. Eckberg
23 P.O. Box 6443
24 San Francisco, California
25 94101
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STATINTL

Approved For Release 2004/12/20 : CIA-RDP79M00467A000300130031-1

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